

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DIGITAL REG OF TEXAS, LLC,

No. C 12-1971 CW

Plaintiff,

ORDER ON MOTIONS
TO SEAL (Docket

v.

Nos. 468, 503,

ADOBE SYSTEMS, INC., et al.,

515, 522, 523,

Defendants.

524, 537, 539,

541, 556, 560,

564)

_____/

Before the Court are numerous administrative motions to seal filed by both parties.

Under Civil Local Rule 79-5, a document may be filed under seal only if a party establishes that the portions sought to be sealed "are privileged, protectable as a trade secret or otherwise entitled to protection under the law." Civ. L.R. 79-5(b). Any sealing request must be narrowly tailored to cover only sealable material. Id. The request must be supported by the designating party's declaration establishing that the information is sealable. Id. subsection (d).

"Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents.'" Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006). In considering a sealing request, the Court begins with "a strong presumption of access [as] the starting point." Id.

A party seeking to seal records attached to a dispositive motion bears the burden of establishing that "compelling reasons supported by specific factual findings that outweigh the general

history of access and the public policies favoring disclosure." Id. at 1178-79. This is because dispositive motions represent "the heart of the interest in ensuring the public's understanding of the judicial process and of significant public events." Id. at 1179.

The strong presumption in favor of access does not apply with equal force to non-dispositive materials, which may be only "tangentially related" to the underlying cause of action. Id. at 1179-80. A party seeking to seal non-dispositive materials must show good cause exists by making a "particularized showing" that "specific prejudice or harm will result" should the information be disclosed. Id.; Fed. R. Civ. P. 26(c). "[B]road, conclusory allegations of potential harm" will not suffice. Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1131 (9th Cir. 2003).

The Court provides the following rulings on the parties' motions to seal, as articulated in the table below.

Docket No.	Ruling
468	Digital Reg seeks to seal portions of its Response to Symantec's Motion to Strike Devanbu's Expert Report and its supporting exhibits. These portions discuss materials designated by Symantec as "Highly Confidential." Because Symantec failed to file a supporting declaration as required by Civil Local Rule 79-5(e), the motion to seal is DENIED.

1	503	Ubisoft requests that portions of its
2		Motion for Leave to File Third-Party
3		Complaint and associated documents be
4		filed under seal. This motion is DENIED
5		as moot. The underlying motion was
6		denied as moot, <u>see</u> Docket No. 575, and
7		so these documents need not be filed
8		under seal or otherwise.
9	515	Digital Reg seeks to seal portions of its
10		Response to Ubisoft's Motion for Leave to
11		File Third-Party Complaint and supporting
12		documents. Because the underlying motion
13		was denied as moot, see above, these
14		documents need not be filed under seal or
15		otherwise.
16	522	Ubisoft moves to seal parts of its Claim
17		Construction and Summary Judgment Brief,
18		along with supporting documents. This
19		request is DENIED because it is not
20		narrowly-tailored to cover only
21		information for which there are
22		compelling reasons to keep under seal.
23		The Wicker infringement report is not
24		sealable in full; only portions
25		discussing source code or otherwise
26		confidential information that Ubisoft
27		demonstrates would harm the company if
28		

1		revealed (such as certain financial
2		terms) may be sealed. The same is true
3		of the Valve Settlement Agreement; some
4		of the language of the Agreement was
5		crucial to the Court's order. <u>See Apple</u>
6		<u>Inc. v. Samsung Electronics Co.</u> , 727 F.3d
7		1214, 1222 (Fed. Cir. 2013). The Valve
8		Settlement Agreement therefore cannot be
9		sealed in full, although "pricing terms,
10		royalty rates, and guaranteed minimum
11		payment terms" are likely to be sealable.
12		<u>In re Elec. Arts, Inc.</u> , 298 F. App'x 568,
13		569 (9th Cir. 2008). Digital Reg, the
14		designating party, failed to file a
15		declaration establish that this Agreement
16		is sealable. Ubisoft and Digital Reg may
17		resubmit a modified and narrowly-tailored
18		version of this sealing request no later
19		than seven days from the issuance of this
20		order.
21	523	Adobe seeks permission to seal
22		(1) documents designated by Digital Reg
23		as "Highly Confidential" (Exhibits 2, 14,
24		17); and (2) documents Adobe claims to
25		cover its trade secret or confidential
26		financial information (Exhibits 3, 4, 5,
27		7, 8, 10, 13, 21, 22, 30, 31, 32, 33).
28		

1		The request to seal the first category of
2		documents is DENIED because Digital Reg
3		failed to file a supporting declaration.
4		The request to seal the second category
5		is GRANTED because, for the most part,
6		Adobe limits its request to only source
7		code or otherwise confidential
8		information.
9	524	Symantec seeks to seal portions of its
10		Motion for Summary Judgment and
11		Responsive Claim Construction Brief and
12		accompanying exhibits. This request is
13		DENIED for failure to narrowly tailor the
14		request to cover only sealable
15		information. For example, Symantec seeks
16		to redact portions of the brief that only
17		generally describe Symantec's "nagware"
18		and do not describe specifically its
19		source code or functionality. Much of
20		this information was crucial to the
21		Court's order. Moreover, this
22		information is general and would not help
23		would-be "hackers," and thus would not be
24		detrimental to Symantec if disclosed,
25		contrary to Symantec's allegations.
26	537	Digital Reg requests leave to seal
27		portions of its Response to Ubisoft's
28		

1		Claim Construction Brief and Motion for
2		Summary Judgment, along with supporting
3		exhibits. Digital Reg states that the
4		information sought to be sealed was
5		designated confidential by Ubisoft.
6		Ubisoft filed a declaration supporting
7		this motion. Because the majority of the
8		request is narrowly tailored to cover
9		Ubisoft's confidential server and
10		detailed source code functionalities, it
11		is GRANTED except as to Exhibit Q. The
12		motion is DENIED as to Exhibit Q, or the
13		Valve Settlement Agreement, for the same
14		reasons as stated above. The Agreement
15		is not sealable in full; the request is
16		not narrowly tailored to cover only
17		confidential information.
18	539	Digital Reg asks that information
19		contained in its Response to Symantec's
20		Motion for Summary Judgment and
21		Responsive Claim Construction Brief be
22		redacted. This information was
23		designated confidential by Symantec.
24		Symantec's declaration states that, with
25		the exception of Exhibits J and K, the
26		information is sealable. The Court
27		GRANTS this request as to the Response
28		

1		itself, but DENIES the request as to the
2		supporting exhibits, because it is not
3		narrowly tailored to redact only sealable
4		information. Symantec may submit a
5		revised, narrowly tailored request within
6		seven days of the issuance of this order.
7	541	Digital Reg seeks to seal portions of its
8		Response to Adobe's Claim Construction
9		Brief and Motion for Summary Judgment and
10		supporting exhibits on the basis that
11		they contain information designated as
12		confidential by Adobe. Adobe filed a
13		supporting declaration. Regarding
14		Exhibit A, Adobe requested that its
15		narrowly tailored redacted versions be
16		filed. This request is GRANTED.
17		Regarding Exhibits C and D, Adobe does
18		not oppose filing these documents in the
19		public record and so the request to seal
20		is DENIED as moot. Regarding Exhibits F
21		and G, the request is not narrowly
22		tailored to cover only sealable
23		information, so it is DENIED. Regarding
24		Exhibits I, J, and K, the fact that it
25		was marked confidential does not mean
26		that it is sealable, so the request to
27		seal is DENIED. Adobe's Software License

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>Agreements are likely made available publicly to users, and so they will not be sealed. Exhibits L-1 through L-6 contain detailed descriptions of Adobe's products, and so the request to seal is GRANTED. Adobe does not object to Exhibit L-7 being filed in the public record, and so the request to seal is DENIED as moot. Some portions of Digital Reg's brief improperly redact public information, as detailed in the rulings above, and so the request to seal is GRANTED in part. Digital Reg must file a version of its brief complying with the rulings above.</p>
556	<p>Symantec and Ubisoft file a motion to redact portions of Defendants' Summary Judgment and Responsive Claim Construction Brief. This request is DENIED because it not narrowly tailored to cover only sealable information. For example, general descriptions of Symantec's "nagware" and Ubisoft's Uplay software, Ubisoft's distributors, and expert admissions about the parties' infringement positions are not sealable. Nor are crucial terms of the Valve</p>

1		License Agreement. Symantec and Ubisoft
2		may submit a revised request no later
3		than seven days after the issuance of
4		this order.
5	560	Digital Reg moves to seal portions of its
6		Response to Defendants' Summary Judgment
7		and Responsive Claim Construction Brief,
8		along with numerous exhibits containing
9		information that was designated as
10		confidential by Defendants. Regarding
11		the Adobe-related exhibits, the motion is
12		GRANTED as to Exhibit 9 and 19; DENIED as
13		to Exhibits 16, 17, 18, which are
14		publicly available documents; DENIED as
15		to Exhibits 13 and 14 for failure to
16		narrowly tailor the request and lack of
17		support from Ubisoft, the designating
18		party; and DENIED as moot as to Exhibits
19		11, 12. Regarding Symantec-related
20		exhibits, the motion is GRANTED as to
21		Exhibits 26, 27, and 48; DENIED as to
22		Exhibits 23, 24, 25, 28, 29 for failure
23		to narrowly tailor the request; and
24		DENIED as moot as to Exhibits 30 and 31
25		because Symantec does not oppose filing
26		these documents publicly. Regarding
27		Ubisoft-related exhibits, the motion is
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	GRANTED as to Exhibits 34, 35, 36, 37, 43, 44, 45, 46, 47; but DENIED as to Exhibits 32, 33, 38, and 39 for failure to narrowly tailor the request. Exhibit 41 is the Valve Settlement Agreement and the request to seal is DENIED for the reasons stated previously in this order. The motion to seal the brief is GRANTED in part according to the ruling on the exhibits above.
564	Defendants seek to seal information that Digital Reg designated as "Highly Confidential." Digital Reg never submitted a supporting declaration, and in any event the information does not appear to be sealable, so the request is DENIED.

IT IS SO ORDERED.

Dated: 9/3/2014


 CLAUDIA WILKEN
 United States District Judge